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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,953	09/29/2003	Gregory D. Dietz	1792.001US1	5273

7590 10/25/2005

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St. Paul,, MN 55111

EXAMINER
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JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,953

Applicant(s)

DIETZ, GREGORY D.

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005 and 23 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 10-12, 14-17, 19-22, and 24-26 is/are rejected.
- 7) ☒ Claim(s) 2, 18 and 23 is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-5, 10, 12, 14, 16-17, 19-22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregory.

Gregory discloses a gun sight comprising:

- |   |                      |
|---|----------------------|
| a) a first sight indicator;               | fig. 9 (deer at 100) |
| b) a second sight indicator;              | fig. 9 (deer at 300) |
| c) a gun barrel; and                      | col. 6, lines 57-60  |
| d) a substantially straight visible line. | see fig. 9           |

3. Applicant's arguments are addressed as follows. It is argued that Gregory discloses a range-finding device. In response, Gregory discloses a range finding device in combination with a reticle (col. 6, lines 5-50 and figs. 3-4). It is further argued that there is no mention of the Gregory device being affixed to a gun barrel. In response, note that the Gregory device specifically recites usage of the telescope in game hunting (col. 6, line 50-col. 7, line 19; figs. 1, 3, and 9). Consequently, the telescope must inherently be mounted to the gun barrel to function. With regard to the issue of using the Gregory device to point or aim the gun, this is clearly the inherent function of a telescope with aiming reticle used in hunting game. It is argued that there is no mention of using the gun barrel to compensate for motion of the target. In response, please

Art Unit: 3641

note col. 10, lines 61-68, and more specifically the intended design to compensate for target motion.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory in view of Lyman Jr..

Gregory applies as previously recited. However, undisclosed is a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion. Lyman Jr. teach a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion 13, 16, 20, 23 (page 1, lines 75-82). Applicant is substituting one type of mounting means for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Lyman Jr. to the Gregory gun sight and have a gun sight with a different type of mounting means.

6. Applicant's arguments are addressed as follows. It is argued that Gregory is directed solely to a range finding device. This is not accurate. Gregory is directed to a range finding device in combination with a reticle (col. 6, lines 5-50 and figs. 3-4). It is further argued that if the clamping system of Lyman Jr. were used in combination with range finder with sight indicators of Gregory, the sight indicators would become larger at a greater distance from the barrel rather than smaller as claimed. This is not convincing because it is not accurate. Gregory discloses how the sight indicators would appear after mounting the telescope on the gun barrel

Art Unit: 3641

(see figs. 1 and 9). In each of these, at least one of the sight indicators becomes smaller as it moves away from the barrel presuming that the telescopic sight is mounted on the top of the firearm. This is the only way a telescope can be mounted on a firearm because it enables sighting through the telescope while permitting firing of the firearm.

7. Claims 1, 3-5, 10-12, 14-17, 19-22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Shepherd.

Shepherd discloses a gun sight comprising:

- |   |            |
|---|------------|
| a) a first sight indicator;               | 93         |
| b) a second sight indicator;              | 97         |
| c) a third sight indicator;               | 95         |
| d) a gun barrel;                          | see fig. 1 |
| e) a substantially straight visible line; | see fig. 7 |
| f) gun sight attachment means;            | see fig. 1 |
| g) a fourth sight indicator;              | 99         |
| h) a fifth sight indicator; and           | 101        |
| i) a second direction.                    | see fig. 7 |

8. Applicant's arguments are addressed as follows. It is argued that the sight indicators (see little men in fig. 7 and circles in fig. 8) get smaller as they get closer to the barrel. In response, note that the reticle image is actually inverted by inverter tube 27. Consequently, the reticle images are actually getting smaller as they get farther away from the barrel (see col. 6, lines 12-19). It was argued at the interview that the Shepherd device is designed for firing at stationary targets only. This is not accurate. Shepherd specifically discusses adjusting the reticle for

Art Unit: 3641

windage and/or target movement by displacing the reticles images in a horizontal direction (see col. 8, line 59 to col. 9, line 13 and figs. 7 and 8).

9. Claims 2, 18, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

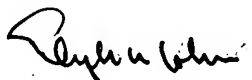
10. Claim 13 is allowed.

11. Applicant's arguments filed 8/22/2005 have been fully considered but they are not persuasive. These arguments have been addressed in the preceding paragraphs of this Office action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is ([Stephen.Johnson@uspto.gov](mailto:Stephen.Johnson@uspto.gov)). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

Application/Control Number: 10/674,953

Page 6

Art Unit: 3641

SMJ

October 21, 2005